

TO APPLY OR NOT TO APPLY: OBTAINING A SPECIAL PERMIT IN AMHERST (PART 1 OF 2)

This article is the first of two articles intended to remove much of the confusion experienced by those seeking to obtain a Special Permit from the ZBA. Through gaining an understanding of the process and by consulting the Planning Department at the beginning of a project, applicants will have the tools and knowledge to make their permitting process relatively hassle-free.

When you ask how to get zoning permission to do something with your land, Amherst's zoning regulations provide four possible answers:

Yes - The land use you propose is normal and expected in your zoning district, so it is permitted under the zoning regulations by right, if you follow the basic zoning rules

Site Plan Review (SPR) - The land use change you propose is normal and expected in your zoning district. It is permitted by right, but requires that the site plan and the way you're going to manage the site be reviewed and approved by the Planning Board under a Site Plan Review approval.

Special Permit (SP & SPP) – The land use change you propose is not normal or expected in your zoning district and may involve potential negative impacts. You will need to obtain a discretionary Special Permit from either the Planning Board (SPP) or (in most cases) the Zoning Board of Appeals, who can refuse to grant the permit.

No – The land use you are proposing is not expected or desired in your zoning district and is known to have negative impacts, so the Town does not permit the use to occur in that district.

The Planning Board issues a few Special Permits (SPP)—for one selected kind of residential development (Open Space Community Development) and for certain kinds of dimensional waivers for SPR uses. By far the majority of Special Permits (SP), however, are issued by the Zoning Board of Appeals (ZBA). Special Permits are designed to provide a highly detailed review of certain developments or uses of property that may substantially impact such things as traffic, utility systems, and/or town and neighborhood character.

Special Permits are unique in nature for several reasons. Special Permits allow people to use their property in a manner that is not considered “as of right” in the given zoning district. Additionally, the Planning Board and ZBA have the right to deny the permit, grant it with conditions that respond to the public interests set forth in the Zoning Bylaw, as well as the concerns of neighbors and the community. The responsibility for ensuring the proper application of a Special Permit and enforcing permit conditions thereafter falls under the jurisdiction of Amherst's Building Commissioner.

Citizens are often uncertain whether or not their project requires a Special Permit. The Zoning Bylaw notes that a Special Permit “may be required in situations wherein the issues of use or uses and/or location and design are deemed to warrant a process of review conducted by the [Zoning] Board of Appeals or Planning Board” (pg 87). Section 3.3 (pp. 26-41 in the Zoning Bylaw) contains a chart that lays out which LAND uses require a Special Permit in a given zoning district.

In applying for a Special Permit, an applicant must submit five pieces of information to the Planning Department at the time of filing. These are:

- A completed application form, available at the Planning Department office or on the Town website [link to application form here]
- Site and/or architectural plans of the construction work being proposed, preferably completed by a certified professional, such as a landscape architect or engineer
- A management plan explaining how the property will be used and managed
- An abutters list from the Assessors Office of all properties located within 300 feet of construction property
- Permit Fees

Members of the Planning Department staff are on hand to assist an applicant through this filing process. With the goal of making the permitting process as smooth as possible, the Planning Department recommends that all applicants consult a staff member at the beginning of the permitting process. This provides applicants with the opportunity to understand the requirements and identify possible community concerns that might affect their project, allowing for adjustments to the proposal prior to submitting the application.

To learn more about the Special Permit review process, stay tuned for Part 2 of this article to be published in the summer edition of *Planning Briefs*. More information about the Special Permitting process can be accessed on the Planning Department's website, at www.amherstma.gov/planning. If you need to obtain a Special Permit, and would like to ensure a smooth permitting process, please schedule an appointment with a member of the Planning Department staff to discuss your proposal.

OBTAINING A SPECIAL PERMIT IN AMHERST (PART 2 OF 2)

This is the second of two articles intended to clarify the process for those seeking to obtain a Special Permit from the Zoning Board of Appeals (ZBA). By understanding the process and regularly consulting with Planning Department staff, applicants can make their Special Permit process relatively painless and hassle-free.

Application – A Special Permit application with all its submittal materials should be filed with the Planning Department. Copies of Special Permit application forms and instructions are available in the Planning Department office or on the Town website at: [link here].

A Special Permit submittal should include the following:

- A completed application form
- Site plans and/or architectural plans showing the existing conditions and the proposed changes on a surveyed plan and completed by a registered professional, such as a landscape architect or engineer
- A management plan that explains in detail how the property will be used and managed
- An abutters list from the Assessors Office, enabling the Town to transmit notice of the Special Permit public hearing to the owners of all properties located within 300 feet of subject property
- Permit fee(s)

Members of the Planning Department staff are on hand to assist an applicant before, during, and after the permitting process. To make the permitting process as smooth as possible, applicants are encouraged to consult with a Planning staff member and with the Building Commissioner (to determine if building or fire codes will affect the project's design) before submitting an application.

These consultations give applicants the opportunity to understand all of the requirements (including the need for any other permits addressing wetlands, property issues, street/shade tree regulations, etc.). They will also identify possible community concerns that might affect the project, allowing applicants to make adjustments to the proposal prior to submitting their application.

Prior to the Public Hearing - Once a completed application has been submitted, Planning Department staff consult with the ZBA Chair and members, and schedule a public hearing for the Special Permit request on the agenda of an upcoming ZBA meeting. Notice of the public hearing must be published in a paper of local circulation in two successive weeks prior to the hearing and mailed to abutters. Depending on the number of application reviews already underway, it may take anywhere from 3-6 weeks before the public hearing is held for a specific application.

During the 'pre-hearing' period, Planning Department staff review the application plans and materials, and may continue to provide feedback to applicants on any issues that become apparent. Copies of the application are transmitted to other Town committees and officials for their review and comment. About a week prior to the public hearing, Planning Department staff write a memo for the ZBA that summarizes the proposal and notes any specific issues the Board may want to address. This memo is sent to the applicant and all the ZBA board members, and is available to the public.

Site Visit - Also prior to the public hearing, the ZBA will schedule a site visit so that the applicant can point out the characteristics of the building or site. This process is designed to provide the Board members with a better understanding of the current conditions and proposed changes. These planned site visits are not part of the public hearing process, and thus are not open for the general public to attend or enter the property.

A site visit is not a time for an applicant (or anyone else) to make their "pitch" concerning an application. Nor should the applicant or any others seek to contact ZBA members at home or elsewhere outside of a public hearing—the hearing of testimony and receipt of evidence regarding a Special Permit application can only take place during a public hearing. The applicant or others wishing to submit information for the ZBA's consideration are encouraged to provide that information to the Planning Department office a week or more in advance of the public hearing.

Public Hearing - The public hearing required for a Special Permit application is intended to give members of the community a chance to hear about and comment on the proposal. The ZBA Chair opens a public hearing by introducing the application and explaining how the hearing will be conducted. The applicant then explains his/her proposal, putting into public record the general outline and specific details of the application. The Board then asks questions about the proposal. Following the presentation and initial questioning by the Board, the Chair will ask for questions and comments by abutters and members of the general public. All questions or comments must be directed to the Chair. Once all comments have been received, the Board will move to close the public hearing. In some cases, if the Board determines there is a need for more information, the Board may not close the hearing during the same meeting in which the hearing was opened.

Instead, the Board may move to continue the public hearing to a future meeting date and time when the requested information will be available.

Deliberations & Voting - Once the public hearing has been closed, the ZBA cannot take any further testimony. The Board begins the deliberation phase of the process by reviewing the ways in which the proposal responds to the requirements of the Zoning Bylaw. The ZBA must make specific findings listed in the Zoning Bylaw in order to grant a Special Permit. Once its deliberations are complete, the Board will move and vote to: 1) grant the Special Permit (usually with a list of conditions), or 2) deny the permit. All votes to grant a Special Permit must be unanimous (3-0).

After the Vote - Planning Department staff are responsible for drafting and amending the Special Permit decision at the ZBA's direction. The decision will include a record of the evidence submitted prior to and at the public hearing, the vote of the Board to grant or deny the permit, the findings of the case, and any conditions the Board elected to impose on the Special Permit. A draft decision is reviewed, corrected, and edited by the ZBA members who participated in making the decision. The resulting final decision is then signed by the members of the ZBA and filed with the Town Clerk by Planning Dept. staff.

Appeal, Filing & Enforcement - Once the Special Permit decision is filed with the Town Clerk, there is a twenty (20) day appeal period during which members of the community or the applicant can appeal the ZBA's decision to the courts. If no appeal is filed by the end of the 20 day appeal period, the applicant should file the decision with the Hampshire County Registry of Deeds in Northampton and may then obtain a building permit to begin work. Enforcement of a Special Permit and its conditions is the responsibility of the Building Commissioner, who serves as the Zoning Enforcement Officer. To enforce a Special Permit, the Building Commissioner refers to the plans (site, architectural, and management) that were approved and signed by the ZBA, and to any conditions attached to the permit.